

**THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

IN RE:

DEBBIE BRAGG DAVIS,
Debtor-In-Possession.

CHAPTER 11

CASE NO. 03-12249-DHW

BARNETT MILLWORKS, INC.
Plaintiff,

v.

ADV. PRO. NO. 03-01121

DEBBIE B. MARCHMAN,
Defendant,

and

ESTATE OF EDNA BABCOCK,
DECEASED and REGIONS BANK,
Garnishees.

MEMORANDUM OPINION

_____ In this adversary proceeding, which is an action removed by representatives of the decedent estate of Edna Babcock (hereinafter, the Babcock Estate) from the Circuit Court of Houston County, Alabama to this court, two motions are presently pending.¹ First, there is the plaintiff's motion for remand of the proceeding or for

¹The State court action was removed pursuant to 28 U.S.C. §1452(a), which provides:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforced such governmental units's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has

abstention by this court, and secondly, there is the motion by Babcock Estate for a partial release of funds held at Regions Bank pursuant a garnishment by the plaintiff. Both motions were set for hearing in Dothan, Alabama on December 10, 2003. For the reasons that follow, the plaintiff's motion to abstain is due to be granted and the Babcock Estate's motion for partial release of garnished funds is due to be denied.

FACTUAL BACKGROUND

A synopsis of the undisputed facts will be of aid in understanding the court's ruling. Barnett Millworks, Inc. (hereinafter, "Barnett") obtained a \$649,306 judgment against Debbie B. Marchman in the Circuit Court of Houston County, Alabama on September 4, 2001.² Pursuant to that judgment, on March 18, 2002 Barnett filed a writ of garnishment against the Estate of Edna Babcock in which Davis has a one-fourth undivided interest. Thereafter, on July 16, 2003 the Circuit Court of Houston County entered a separate judgment on the garnishment against the Babcock Estate for \$791,264.50, which represents the unpaid balance of the judgment against Davis plus accrued interest.³ This July 16, 2003 judgment is against the Babcock Estate and not merely Davis' undivided interest in the estate.

On August 18, 2003, Barnett filed a writ of garnishment against Regions Bank, wherein \$377,264 is on deposit in an account belonging to the Babcock Estate. Subsequently, the Babcock Estate filed motions in the Circuit Court 1) to stay its judgment against the Babcock Estate pending the appeal to the Alabama Supreme Court and 2) to freeze its Regions Bank account and to determine the percentage of the funds that may be properly garnished by Barnett. The Circuit Court granted the motion to stay the judgment against the Babcock Estate pending appeal conditioned upon the Babcock Estate's posting a supersedeas bond, which to date it has not done. Further, at the time this action was removed to this court, the Circuit Court had not

jurisdiction of such claim or cause of action under section 1334 of this title.

²Debbie B. Marchman is the same person as the debtor in this chapter 11 case, Debbie Bragg Davis. Hereinafter, is referred to as "Davis".

³The Babcock Estate has appealed the Circuit Court's post judgment writ of garnishment against it to the Alabama Supreme Court contending that the Circuit Court misapplied *Code of Alabama*, §6-6-411(b). The appeal is not, however, an appeal of Barnett's original judgment against Davis, which was affirmed on appeal and now has become final and non-appealable.

ruled on the Babcock Estate's second motion to freeze the Regions Bank account and to determine the percentage of the account subject to Barnett's garnishment.

Finally, Davis filed a chapter 11 petition for relief in this court on September 25, 2003.

CONCLUSIONS OF LAW

At issue here is whether Barnett can enforce its separate judgment against the entire Babcock Estate and not merely Davis' undivided interest therein. That issue presents a question entirely of state law.

Under 28 U.S.C. §1334(c)(2), mandatory abstention is required of this court when a State law claim or cause of action is presented, and when this court has only related to jurisdiction over the claim or cause.⁴ Therefore, the court must first determine the type of jurisdiction it enjoys in this adversary proceeding in order to decide whether mandatory abstention is required.⁵

Under 28 U.S.C. §1334(a), the district court, and by order of reference, the bankruptcy court has "... jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Therefore, this court's jurisdiction must emanate from one of these three sources; 1) proceedings "arising under," 2) proceedings "arising in," or 3) proceedings "related to" a title 11 case.

An action that "arises under" title 11 is one that is created by the Bankruptcy Code itself. Examples include: actions to determine the dischargeability of a particular debt or to determine a debtor's eligibility for discharge in general, transfer

⁴28 U.S.C. §1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

⁵It is noted that the Babcock Estate contends that the court has "related to" jurisdiction in this matter.

avoidance actions by trustees, and actions seeking turnover of estate property. These causes of action find their genesis in the Bankruptcy Code. The matter of determining the enforceability of Barnett's judgment against the Babcock Estate is clearly not an action created by the Bankruptcy Code. Hence, this court has no §1334 "arising under" jurisdiction.

Actions "arising in" a bankruptcy proceeding are generally those associated with administrative matters that arise within a bankruptcy case itself. While the Bankruptcy Code does not specifically create these actions, they would have no existence or utility outside the bankruptcy context. It is clear, too, that the removed action here existed and had utility completely outside Davis' bankruptcy case. Hence, this court is without §1334 "arising in" jurisdiction.

The Eleventh Circuit has used the following test for determining whether a proceeding is "related to" a case under title 11:

"[T]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy." *Lemco Gypsum, Inc.*, 910 F.2d at 788 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984)). In other words, "[a]n action is [sufficiently] related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Lemco Gypsum, Inc.*, 910 F.2d at 788 (quoting *Pacor, Inc.*, 743 F.2d at 994).

Munford, 97 F.3d at 453 (11th Cir. 1996). "The 'related to' connection has been described as 'the minimum for bankruptcy jurisdiction.'" *Continental Nat'l Bank of Miami v. Sanchez (In re Toledo)*, 170 F. 3d 1340, 1345 (11th Cir. 1999). "In order for the bankruptcy court to exercise subject matter jurisdiction over a dispute . . . some nexus between the civil proceeding and the title 11 case must exist." *Munford*, 97 F.3d at 453 (11th Cir. 1996) (citing *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 787 (11th Cir.1990)). The court agrees with the Babcock Estate that the outcome of the post judgment, judgment of garnishment against the Babcock Estate could have a conceivable effect upon the administration of Davis's bankruptcy estate. Hence, the court exercises §1334 "related to" jurisdiction over this proceeding.

CONCLUSION

Having found that the matter now before the court is based upon a State law claim or cause of action, and that the court has only “related to” jurisdiction therein, the court must abstain pursuant 28 U.S.C. §1334(c)(2).⁶ Separate orders, consistent with this memorandum opinion, will enter abstaining from hearing the adversary proceeding and remanding the same to the Circuit Court of Houston County, Alabama and dismissing, without prejudice, the Babcock Estate’s motion for partial release of the garnished Regions Bank account. In so doing, however, plaintiff is reminded that abstention and remand do not equate to relief from the automatic stay which Davis enjoys by virtue of having filed for bankruptcy relief. *See* 11 U.S.C. §362. Plaintiff cannot take or continue any action contravening the automatic stay without being granted specific relief from this court.

Done this 6th day of January, 2004.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

⁶Neither party contends that the proceeding cannot be disposed of in a timely fashion by the Circuit Court.